IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14877 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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N.G. VAGHELA - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 1 - Respondent(s)

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Appearance :

MR IS SUPEHIA for Petitioner(s) : 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 15/09/2005

ORAL JUDGMENT

By this petition under Article 226 of the Constitution of India, the petitioner challenges the decision of the respondent authorities in granting extraordinary leave in place of medical / commuted leave applied for by the

petitioner on account of sickness of his wife. Challenge is founded on the ground that as per Rule 752 of B.C.S.R., extraordinary leave can be granted only in given set of circumstances which were not prevailant in the case of the petitioner. The second ground is that under Rule 619 of the B.C.S.R., the nature of leave applied for by the government servant cannot be altered at the option of the sanctioning authority. The authority may, however, refuse the leave due and applied for or revoke the leave granted, but it cannot alter the nature of leave.

2.Brief facts of the case can be stated thus.

3.The petitioner was serving as Taluka Development Officer at Jetpur-Pavi, District Vadodara and retired with effect from 31st March, 2004 on reaching age of superannuation. The petitioner did not attend duty from 9/12/1998 to 17/3/1999 on account of sickness of his wife (petitioner's wife was suffering from paralysis and other ailments). The petitioner applied for medical leave on the said ground alongwith a medical certificate. The respondent No.2 by order dated 25/11/1999, however, granted extraordinary leave

without pay for the said period of 99 days instead of commuted leave on medical ground applied for by the petitioner.

3.1Against the said order, the petitioner preferred an appeal and / or representation before respondent No.1. Respondent No.1 by order dated 4/5/2005, rejected the said appeal / representation of the petitioner and confirmed the order of respondent No.2. The ground for rejection was that since the petitioner had already retired from service with effect from 31/3/2003, appeal was not required to be considered. This has given rise to the present petition.

4.Learned Advocate Mr.I.S.Supehia has drawn attention of this Court to the provisions contained in Rule 752 and 619 of B.C.S.R., and submitted that it is not open for the sanctioning authority to change the nature of leave applied for. He also submitted that extraordinary leave may be granted in special circumstances, where no other leave, by rule, is admissible or where other leave is admissible, government servant concerned applies for granting extraordinary leave.

4.1Mr.Supehia submitted that there is no dispute that sufficient number of commuted leave was standing to the credit of petitioner and could have been granted. He placed reliance on decision in case of ***C.G.Govindan Vs. State of Gujarat & Ors. of 1991 (2) G.L.H. 332*** and submitted that sick leave can be availed of even to attend family member who is sick. He also submitted that other side does not dispute the genuineness of the ground for which commuted leave was sought.

4.2Mr.Supehia submitted that grant of extraordinary leave of 99 days will have a far reaching effect on retiral benefits of the petitioner and therefore, this petition may be entertained.

5.This petition is opposed to by learned A.G.P. Mr.Dabhi. He has drawn attention of this Court to the affidavit in reply filed on behalf of respondent No.2. He has also drawn attention of this Court to G.R. dated 25/10/2000 which relates to better management and administration of personnel and requires that leave must be got sanctioned in advance. He submitted that petition therefore, may be dismissed.

6.At the outset, it would be appropriate to record that following aspects remain undisputed.

I.The petitioner had sufficient commuted leave to his credit when he applied for the same.

II.The cause of sickness of wife indicated by the petitioner for grant of commuted leave was genuine.

7.In order that the contentions raised before this Court can be better appreciated, it would be proper to refer to Rule 752 and 619 of B.C.S.R., which can be quoted thus.

“752: Extraordinary leave may be granted in special circumstances (1) when no other leave is by rule admissible or (2) when, other leave admissible, the government servant concerned applies in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.”

“619. Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved

to the authorities empowered to grant it.

Note 1. Under Rule 757 (a) the nature of the leave due and applied for by government servant cannot be altered at the option of the sanctioning authority and under this Rule while it is open to the sanctioning authority to refuse the leave due and applied for or revoke the leave granted, it is not open to him to alter the nature of such leave."

7.1A plain reading of these provisions, would clearly indicate that extraordinary leave can be granted only in one of the circumstances indicated in the Rule. One being a situation where no other leave is, by rule, admissible and the other being a situation where though other leave is admissible, a government servant concerned applies, in writing, for grant of extraordinary leave. Neither of the situation was prevailant, when the petitioner applied for leave in question. The petitioner had commuted leave to his credit which was admissible under Rules and that the petitioner had not applied for extraordinary leave.

7.2The commuted leave was sought on account of sickness of his wife. As per decision rendered in in case of

C.G.Govindan Vs. State of Gujarat & Ors. of 1991 (2) G.L.H. 332 benefit of commuted leave is extendable in such a case.

7.3As per Note 01 in Rule, 619, the sanctioning authority cannot alter the nature of leave applied for though it may refuse to sanction leave or may revoke the leave already granted, but it cannot change the nature of leave. Admittedly, the petitioner had applied for commuted leave and respondent No.2 could not have sanctioned extraordinary leave by changing the nature of the leave applied for. Under the circumstances, the action of respondent No.2 cannot be upheld.

7.4The ground on which extraordinary leave is granted, as can be seen from the order dated 25th November, 1990, is that the petitioner instead of, proceeding on leave after presenting himself at the transferred place, had proceeded on leave for a long time, which action is arbitrary and therefore, commuted leave cannot be granted. Infact, extraordinary leave without pay was granted. The ground on which extraordinary leave was sanctioned is not a valid or accepted ground

under B.C.S.R. 752 and does not fall in either of the category indicated and therefore, also, the order is bad.

7.5For the forgoing reasons, grant of extraordinary leave by respondent No.2 and approved and / or confirmed by respondent No.1 is an act dehors the provisions of B.C.S.R.

8.The petition therefore, deserves to be allowed to the extent that the orders dated 25th November, 1999 and 4th May, 2005 passed by respondents No.2 and 1 respectively, are hereby quashed and set aside. When the respondent authorities do not dispute the genuineness of the cause for which commuted leave was applied for, coupled with mandate of provisions contained Rule 752 and 619 of B.C.S.R., commuted leave as prayed for ought to have been sanctioned. Respondent No.2 shall consider the case of the petitioner accordingly and accord consequential benefits, if any, accruing to the petitioner under various heads like pension, gratuity, leave encashment, etc...

9.The request regarding award of 10 % interest and ad-hoc payment of Rs.40,000/- is not granted in absence of any extraordinary circumstances or allegation of any malafides. The petition stands allowed accordingly. Rule made absolute. No costs.

(A.L.DAVE, J.)

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